

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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December 18, 2002

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GSBCA 15870-RELO

In the Matter of RICHARD J. ANDERSON

Richard J. Anderson, Missoula, MT, Claimant.

Jeanne DiGange, Authorized Certifying Officer, Office of the Chief Financial Officer, National Finance Center, Department of Agriculture, New Orleans, LA, appearing for Department of Agriculture.

**GOODMAN**, Board Judge.

Claimant, Richard J. Anderson, is an employee of the Department of Agriculture. He has requested that this Board reconsider its decision dated September 4, 2002, arising from claimant's relocation.

## Previous Decision

Claimant was authorized a permanent change of station from Jackson, Wyoming, to Missoula, Montana, by travel orders dated May 14, 2001. His orders authorized temporary quarters subsistence expenses (TQSE) for up to sixty days for him and his family when they reported to the new duty station. In our previous decision, we found that when the agency issued claimant's orders, the agency did not afford claimant the choice between reimbursement of actual or fixed TQSE, as required by regulation. Accordingly, we held that claimant may now be afforded this choice. We held further:

If claimant chooses to be reimbursed at the fixed rate, the agency must determine how many days of TQSE to authorize. The regulation provides that the agency may authorize up to thirty days of fixed rate TQSE, which means that the agency does not have to authorize the full thirty days. In this case, because claimant has not been given his choice of actual rate or fixed rate TQSE until after he has moved into permanent quarters, the agency knows that claimant spent only three days in temporary quarters. Because the agency knows that claimant only needed temporary quarters for three days, it obviously has no rational basis for authorizing

claimant any more than three days of fixed rate TQSE. If claimant chooses the fixed rate TQSE option, the agency may, therefore, modify his travel orders to authorize the fixed rate option but only for three days.

The agency's policy was to give its employees the option of choosing actual rate or fixed rate TQSE. Since the agency failed to give claimant that choice before he relocated, it should allow him to make that choice now. If claimant chooses to be reimbursed at the fixed rate, the agency should modify his travel orders to authorize him three days of TQSE and he will be paid \$255 (3 x \$85). If he chooses to be reimbursed at the actual rate, he will be paid \$291.63 in accordance with his orders as originally issued. . . . The agency may amend claimant's travel orders to allow him to choose between the actual rate and fixed rate of TQSE reimbursement. If claimant chooses to be reimbursed at the fixed rate, he would be entitled to reimbursement for three days of TQSE at the fixed rate.

#### Request for Reconsideration

Claimant requests reconsideration of our previous decision on two grounds.

#### Alleged Factual Error

Claimant asserts that there were factual errors contained in the decision. He states that our determination that he was only in temporary quarters for three days is incorrect, and that he is not aware of the source of information as to the dates and dollar amounts cited in our decision indicating actual expenses incurred in temporary quarters. (The Board indicated that this information came from a voucher he submitted.) He states that he only submitted one voucher for thirty days of TQSE at the fixed rate, totaling \$2550, which he has attached to his request for reconsideration, and that he never submitted a claim for a lesser amount. He also states that the period of time we said he spent in temporary quarters covers only a portion of the time he actually spent in temporary quarters, and therefore the conclusion in our decision regarding the actual days in temporary quarters is "not in agreement with what actually took place." Claimant does not state in his request for reconsideration how many days he believes he was actually in temporary quarters.

Agency Policy

Claimant's second ground for reconsideration concerns his understanding of what he believes is agency policy. Claimant states:

[T]he decision states that after I completed my travel I became aware, "that it was the agency's policy to allow employees to choose between receiving reimbursement of actual TQSE expenses or TQSE at a fixed rate for up to thirty days." This statement is a misinterpretation of agency policy. The correct statement of the policy of the Agency (USDA Forest Service) is to allow employees to receive actual TQSE expenses for a fixed rate of 30 days **regardless of the number of days actually spent in temporary quarters.** (emphasis added). This policy can be seen below in the excerpt from the Forest Service Handbook 65099.33, Chapter 302, Part 302-6 Subpart C, Section 302-6.200.

The excerpt from the Forest Service Handbook quoted by claimant does say that employees choosing the fixed amount TQSE are allowed reimbursement as if they spent thirty days in temporary quarters regardless of the number of days actually spent in temporary quarters. Claimant also has attached to his request for reconsideration a form that is used by the Forest Service, which also states that if the employee chooses the fixed amount TQSE reimbursement, "30 days will be allowed regardless of the actual amount of days in temporary quarters."

Discussion

Claimant asserts that he never submitted a voucher that included the information we cited in our original decision to support our conclusion that claimant and his wife were in temporary quarters for only three days. Even though the Government stated in its submission that claimant was in temporary quarters for five days, the specific dates and dollar amounts cited in our decision supporting our conclusion that claimant was in temporary quarters for three days was taken from information attached to a memorandum from the claimant to a Government official dated July 26, 2001, which was included in the Government's initial submission to the Board. Claimant is therefore correct that the information was not contained in a voucher he submitted, but the information cited by the Board was from that submitted by claimant to the Government.<sup>1</sup>

Claimant states in his request for reconsideration that the Board's determination as to the amount of time he actually spent in temporary quarters is "not in agreement with what in fact took place" and states further that "the

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<sup>1</sup> The dates in our original decision were erroneously designated as "2002." The original information contained the dates as "2001."

portion of the decision that discusses the number of days necessitates reconsideration." Except for this general assertion that our determination is incorrect, claimant offers no further information or explanation as to why he believes the Board's previous determination of the number of days in temporary quarters is incorrect. However, we have reviewed the information in the record, and conclude that it requires a modification to our original decision: Claimant was in temporary quarters for five days, and if he elects the actual expense method of reimbursement for TQSE, he should receive \$495.64.

Claimant also contends that we misstated his interpretation of agency policy, which he believes was to allow employees electing reimbursement of TQSE at the fixed rate to be paid for a full thirty days regardless of the actual number of days spent in temporary quarters. He also believes that this Board failed to understand that claimant's interpretation of agency policy was in fact agency policy at the time relevant to his claim. Accordingly, claimant asserts that he would have made the choice to be reimbursed at the fixed rate if offered, and now to limit his reimbursement to less than thirty days at the fixed rate of TQSE reimbursement is contrary to agency policy. He concludes that he believes "the only fair and appropriate course of action is to implement the agency policy as written."

Claimant has submitted with his request for reconsideration an excerpt from the agency Forest Service Handbook and an agency form which does state that employees choosing the fixed amount TQSE are allowed reimbursement for thirty days in temporary quarters regardless of the number of days actually spent in temporary quarters. We note that despite our requests for additional information before we issued our previous decision, this specific information was not earlier submitted to the Board by either claimant or the agency. In fact, when the Board inquired of the agency as to claimant's entitlement if he had originally been offered the fixed rate, the agency referenced only the portions of the Federal Travel Regulation to which we referred in our original decision, which allow reimbursement of TQSE at a fixed rate "up to thirty days." The agency did not reference either of the sources of information which claimant now offers.

After receipt of the request for reconsideration, this Board sent an inquiry to the agency with regard to the policy which the claimant alleges exists. The agency responded by sending a factual summary which details the timing of the establishment of their policy on this issue.

Mr. Anderson's assertions about agency policy are correctly stated. The policy now clearly states: "Employees choosing the fixed amount of Temporary Quarters Subsistence Expense (TQSE) are allowed 30 days in temporary quarters regardless of the number of days actually spent in temporary quarters." In Mr. Anderson's case, the intended policy had not been implemented by Region 4 TOS Service Center at the time his travel authorization was issued.

Since June 29, 2001, all employees served by the Region . . . have been offered the option of fixed amount temporary quarters.

The agency indicates that it began to implement the fixed amount temporary quarters option on June 29, 2001, before claimant completed his relocation in July 2001. The information submitted by the agency also indicates, however, that the agency did not amend its forms until June 2002 to reflect the agency policy of reimbursement of fixed amount TQSE regardless of the actual days, and the agency handbook was not amended to reflect the policy until August 2002. Thus, it is unclear whether, before claimant completed his relocation, the agency was implementing its current policy of reimbursing employees for a full thirty days of TQSE if they elected the fixed amount.

Our previous decision remains unchanged with regard to claimant's specific circumstances. At the time claimant relocated, the only formal agency guidance as to implementation of the fixed amount option was the FTR rule cited in our original decision. This rule did not guarantee thirty days of fixed amount TQSE regardless of the number of days an employee was in temporary quarters. Because the agency now knows that claimant was only in temporary quarters for five days, it obviously has no rational basis for authorizing claimant any more than five days of fixed rate TQSE. If claimant chooses the fixed rate TQSE option, the agency may, therefore, modify his travel orders to authorize the fixed rate option but only for five days.

#### Decision

The request for reconsideration is granted. Our previous decision has been reconsidered and revised as set forth above.

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ALLAN H. GOODMAN  
Board Judge